IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1198 of 2003
In
SPECIAL CIVIL APPLICATION No. 5547 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)

Versus

ANIRUDDHSINH S JADEJA & 1 - Defendant(s)

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Appearance :

GOVERNMENT PLEADER for Petitioner No(s).: 1,2.

DHARMESH D NANAVATY for Respondent No(s).: 1.
None for Respondent No(s).: 2.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 14/07/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The present is an appeal under clause 15 of the Letters Patent at the instance of the State of Gujarat against the decision dated 06.03.2002 rendered in Special Civil Application No.5547 of 1996 and Special Civil Application No.2460 of 1998.

2. The facts in nutshell are that the respondent workman after he was removed from services made a reference to the Labour Court and submitted before the said Court that contrary to the provisions contained in section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”), he was removed from the services, therefore, he was entitled to be reinstated. It was submitted that the workman was not removed from the services but he abandoned the services. The parties led evidence in support of their respective contentions. The workman submitted on oath the he worked for 240 days, but did not lead any further evidence nor produced any documentary evidence in support of the said contention. The Government, through its witnesses did not say that the workman had abandoned the services. The learned Labour Court without recording a finding that the workman had worked for 240 days or not, directed reinstatement with 25% back wages. Being aggrieved by the said award both the parties filed the above referred Special Civil applications. It appears that during pendency of the said Special Civil applications, a Civil Application was filed before the learned Single Judge for enforcement,

implementation and execution of the award made by the learned Labour Court. The learned Single Judge accordingly allowed the application and directed reinstatement of the present appellant.

3. Since after execution of the award the respondent workman continued to be in service. When the matter came up for final hearing before the learned Single Judge, after taking note of the reinstatement of the workman the Court observed that it would not be just and fair to interfere in the matter because the workman had already been reinstated. Though the learned Labour Court had not recorded any finding that he had worked 240 days, however, the learned Single Judge directed quashing of payment of 25% of back wages. Being aggrieved by the said decision of the learned Single Judge, the State is before us in these proceedings.

4. Learned counsel for the appellant submitted that in absence of any finding in favour of the workman that he worked for 240 days and there was violation of section 25F of the Act, no relief could be given in favour of the workman and secondly simply because under the directions of the High Court the order was executed, the High Court could not refuse to interfere in the matter. On the other hand learned counsel for the workman submitted that at this stage if this Court proposes to interfere in the matter it would lead to unsettle the settled life of the workman and this Court even otherwise should not interfere in the matter because the learned Single Judge refused to interfere in the same.

5. We have heard the parties. It is trite law that if

an order passed by the competent court is put into execution and is, in practice, executed the challenge to the original order does not become non-est, the challenge still survives. If the argument of the respondent is accepted it would lead to number of problems because then in each case wherever the orders are executed everybody would come and say that the appeal preferred by the other side deserves to be rejected. The learned Single Judge in our considered opinion was not justified in refusing to interfere in the matter simply on the ground that the order has been executed.

6. Once the learned Single Judge was of the opinion that the finding relating to work for 240 days has not been recorded by the learned Labour Court, then the learned Single Judge was required to interfere in the matter. In our considered opinion for making award in favour of the workman the Labour Court was obliged to record a finding that the workman had worked for 240 days. In the present case barring bald assertion of the workman that he worked for 240 days nothing further was brought on record.

7. Learned counsel for the workman had relied upon a judgement of the Supreme Court in the matter of **H.D. Singh Vs. Reserve Bank of India and others,** reported in A.I.R. 1986 SC 132, to contend that if contrary to the oral assertion of the workman the establishment does not produce records, then an adverse inference should be drawn against the establishment.

8. In our opinion the submission cannot be accepted for two reasons. Firstly, the Labour Court, so also the

learned Single Judge did not draw any adverse inference against the establishment for non production of documents and secondly, the Larger Bench of the Supreme Court in the matter of Manager, **Reserve Bank of India, Bangalore Vs. S. Mani & others**, reported in 2005 A.I.R. SCW 1729, has observed that the oral assertion that a particular person had worked for 240 days in absence of anything further would not provide a ground in favour of the workman for his reinstatement.

9. At this stage the learned counsel for the workman submits that in view of the earlier judgement of the Supreme Court no further evidence was led and if at this stage following the judgement in the matter of **Manager, Reserve Bank of India** (supra) a finding is recorded against interest of the workman, he would suffer unnecessarily. The submission has some force.

10. Taking into consideration the totality of the circumstances we are of the opinion that the workman deserves a further opportunity to lead further evidence in support of his contention that he had worked for 240 or more days to prove that he was in continuous service for application of section 25F of the Act. We set aside the order passed by the learned Single Judge and quash the award made by the learned Labour Court. We hereby direct the parties to appear before the learned Labour Court on 22.08.2005. The learned Labour Court shall provide fresh opportunity to the parties to lead further evidence in the matter. If the workman makes an application that the original records/ muster rolls be summoned from the custody of the Government, then

the application would be decided in accordance with law so that the workman gets proper opportunity in the matter. We request the learned Labour Court to dispose of the matter, preferably within six months from the date of appearance of the parties. The Appeal is allowed. There shall be no order as to costs. Direct service is permitted.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)

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